S.B.Civil Second Appeal No.108/2003.

Sohan Lal.
vs.
Bhullu and others.

Date : 14.3.2007

HON'BLE MR. PRAKASH TATIA, J.

Mr. V Goyal, for the appellant.
Mr. R Arora, for the respondent no.1
Mr. HR Soni, AGA, for the respondents no.2 to 5.

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Heard.

The only substantial question of law involved in this appeal is :-
"Whether the court below could have passed the decree merely on the ground that the defendant has not submitted written statement ?"

At the request of learned counsels for the parties, the appeal itself is heard finally.

The plaintiff filed suit for permanent injunction against the appellant as well as respondents no.2 to 5 – Superintendent Engineer, CAD ; Executive Engineer, CAD and Assistant Engineer, CAD of the Government

department of IGNP, Bikaner and the District Collector, Bikaner.

None of the defendants filed written statement and the trial court closed the opportunity of defendants to file written statement by order dated 14.4.1999. The trial court merely on the basis of reason that since the defendants have not filed the written statement, decreed the suit under Order 8 Rule 10 CPC and granted the decree directing the defendants to change water supply as well as directed defendants to supply water on first come first get basis. Not only this, the trial court also directed to reconstruct the canal.

The trial court has not recorded any reason for decreeing the suit nor it is apparent from the judgment of the trial court that the court looked into relevant provisions of law governing the opening of water course and procedure for opening of new water course etc.

So far as legal position is concerned, there is no dispute that the Court cannot pass the decree merely on the ground that the written statement has not been filed where the court cannot lawfully pass the decree, therefore, it is the duty of the Court to apply its mind to the facts mentioned in the plaint and the grounds on the basis of which decree is sought. The Court is also required to see as to whether on admitted facts, the decree can be passed or not.

In view of the above reason, the appeal deserves to be allowed as the judgment passed by the court below has been passed without application of mind on the facts of the case and without considering the issue as to whether on admitted facts, the suit could have been decreed.

At this stage, learned counsel for the appellant as well respondents no.2 to 5 submitted that the defendants may be permitted to file written statement.

For this, learned counsel for the respondent no.1/ plaintiff vehemently submitted that the defendants did not choose to file written statement for 11 years and, therefore, there is no reason for permitting them to file the written statement at such a belated stage.

Since complete facts are not available in this appeal, therefore, this Court is not inclined to accept this prayer as appellate court.

However, it is made clear that if the defendants make out a case for filing written statement at such a belated stage, they may move application which may be considered by the court below after hearing the plaintiff and that too strictly in accordance with law and not influenced by this judgment.

Consequently, this appeal is allowed, the judgment

and decree dated 23.4.1999 of the trial court which has been upheld by the first appellate court vide judgment and decree dated 19.12.2001 are set aside and the matter is remanded to the trial court for deciding the suit afresh in accordance with law.

Both the parties are directed to appear before the trial court on 16.4.2007.

(PRAKASH TATIA), J.

S.Phophaliya